

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: H.488

Name of Bill: Transportation Program and Capital Bill

Agency/ Dept: VTrans

Author of Bill Review: Chris Cole

Date of Bill Review: May 14, 2015

Related Bills and Key Players NA

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both

Recommended Position:

X Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. This is the annual Transportation Program legislation that authorizes expenditures on specific transportation projects and provides grants to municipalities.

Sec. 1 adopts the Agency of Transportation's proposed budget except as amended by the bill, and defines several terms used throughout the bill.

Sec. 2 cuts overall authorized Transportation Program spending by \$1,500,000, with the savings to be achieved through personnel, labor, or consultant cost savings identified by the Secretary of Transportation. The language of this section is broad enough to allow the Secretary to achieve the \$1.5 million in savings by leaving vacancies unfilled or through reductions in Agency personnel, reduced wages or benefits that may be agreed upon, or contactor cost savings, or by some combination of these.

Sec. 3 amends spending authority in the Program Development part of the Agency's proposed fiscal year 2016 budget to:

- (1) increase spending authority of transportation funds by \$3,514,996;
- (2) reduce spending authority of TIB funds by \$6,600,000; and
- (3) reduce spending authority of federal funds by \$12,340,016.

The net spending reductions (of \$3,085,004 in TIB funds and of \$12,340,016 in federal funds) are to be made by reducing spending on projects selected at the discretion of the Secretary of Transportation.

Subsec. (b) directs the Secretary not to delay any projects that otherwise would have proceeded in fiscal year 2016 unless the spending reductions cannot be achieved through other means. The committee expects that the savings can be achieved through lower-than-expected project bids due to the decline in asphalt and fuel prices, or from projects delayed due to unforeseen circumstances such as right-of-way issues.

More information if needed:

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The increase in authorized spending of transportation funds, and the reduction of authorized spending of TIB funds, under this section arise from changes in:

1. the consensus revenue forecast and the timing of a sale of property;
2. the required transfer to the transportation stabilization reserve; and
3. authorized spending, and the transfer to the Central Garage Fund, under the bill.

The need to reduce authorized spending of TIB funds arises from the downgrade in expected TIB revenues in the January 2015 consensus revenue forecast. Because the net reduction in authorized spending of TIB funds under this section is \$3,085,004, and because every dollar of State money used for Program Development projects is matched with four dollars of federal money, the net reduction in authorized TIB spending triggers the need for a reduction in authorized spending of federal funds of \$12,340,016.

Sec. 3a Establishes contingent spending authority in the event that there exists a “net balance” in the Transportation Fund or TIB Fund at the end of the current fiscal year, or if there exists a “net increase” in forecasted Transportation Fund or TIB Fund revenues for fiscal year 2016 under the July consensus revenue forecast.

If the contingency is met, then up to \$3 million in State transportation and TIB funds and \$12 million in federal funds are authorized and appropriated first to be used on projects that otherwise may be required to be delayed under Sec. 3 of the bill, and then on approved Paving Program projects and activities.

Sec. 4 Maintenance Program - reduces authorized spending in the Agency’s Maintenance Program by \$700,000. The Agency forecasts that it can achieve these savings through lower-than-expected spending on fuel resulting from the decline in fuel prices.

Sec. 5 Town Highway Structures Program - authorizes an increase of \$3.15 million to the Town Highway Structures Program. This increase restores \$3.15 million taken from the Town Highway Structures Program in this year’s Budget Adjustment Act in order to balance the fiscal year 2015 transportation budget.

Sec. 6 Town Highway Bridge Program - cancels a candidate project from the Town Highway Bridge Program. The town of Fair Haven requested cancellation of this project. The Town Manager of Fair Haven stated that the bridge is out of service and the town wishes it to remain closed to traffic. The bridge is not needed because a bypass roadway was recently completed just east of the bridge.

Secs. 7–8 Rest Areas Program

Sec. 7 cancels the Derby rest area expansion project. However, Sec. 8 of the bill adds a project to the Rest Area Program candidate list for the rehabilitation of the Derby rest area in order to address accessibility issues, heating system upgrades, and a waterline extension.

More information if needed:

Since the Derby rest area expansion project was first added to the State’s transportation program more than 10 years ago, BGS has completed several improvements to the Derby rest area. As a result, a major expansion project no longer is needed. In addition, federal money that was available for the expansion is no longer available. As a result, the Agency recommended instead that a project be added to the candidate list to authorize it to evaluate alternatives for rehabilitating the Derby rest area.

Sec. 9 Transfer to the Central Garage Fund - transfers \$162,504 from the Transportation Fund to the Central Garage Fund. This is an annual transfer that enables the Central Garage to purchase and replace highway maintenance equipment. This section notwithstanding 19 VSA § 13(c) because that section would require a transfer of approximately \$1.7 million. A lower transfer amount is needed this year in part because a balance of \$957,496 is available as a result of a cash surplus in the Central Garage Fund.

Sec. 10 Transportation Revenue Study Committee - directs the Agency to identify and evaluate funding sources, other than motor vehicle fuel taxes, needed to maintain the State's transportation system in good repair and that account for State and federal policies that have and will continue to reduce motor vehicle fuel consumption. The Agency is required to submit a report to the Committees on Transportation by January 15 of next year.

More information if needed: The Agency evaluation required in this section is a follow-up to a 2012 study committee on transportation funding. With the federal funding picture and federal policies that affect the transportation sector in flux, and with changes in technology that affect revenue and that may create new opportunities, additional work is needed to identify options for how Vermont will meet its transportation funding needs going forward.

Sec. 11 Study of Montpelier to St. Albans Commuter Rail Service, Albany to Manchester to Bennington Bus Service

Subsection (a) of Sec. 11 directs the Agency to study the financial and operational feasibility of a commuter rail service in the corridor between St. Albans and Montpelier, including connecting service to Burlington. Because of the complexity of the study subject matter, the Agency's report on its findings is due in January 2017. The Agency has never conducted a comprehensive commuter rail service feasibility study for this corridor.

Subsection (b) of Sec. 11 directs the Agency to study the costs and benefits, implementation steps, and timeline associated with initiating an Albany to Manchester to Bennington bus service under various service models. In consultation with New York's Department of Transportation, the Agency has studied alternatives for an expansion of passenger rail to serve southwestern Vermont. Because of the high cost of rail infrastructure improvements needed to initiate such rail service, and the limited availability of federal funding sources for rail improvements, the Transportation Committee believes it is appropriate for the Agency to evaluate bus service options to serve southwestern Vermont.

Sec. 12 Review of E&D Transportation Program - directs the Agency to review the Elders and Persons with Disabilities Transportation Program in order to analyze the gap between current and projected Program resources and Program needs for transportation services over a 10-year time frame, and to analyze various challenges and opportunities related to the Program. The gap between the need and the resources for E&D transportation services has not been studied in 10 years, and since the last study, the demand for E&D transportation services has increased.

Secs. 13–15 Authority of Agency and Secretary - clarify the authority of the Agency of Transportation to accept and expend grant or gift money or federal money.

Sec. 13 clarifies that, with respect to gifts or grants made to the State for the promotion of aeronautics, the Agency's authority to receive and expend gifts or grants is subject to the same oversight process involving

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notification and the potential for review by the Joint Fiscal Committee that applies to all original grants and gifts received by the State.

Similarly, with respect to federal monies received for airports and other air navigation facilities, Sec. 14 clarifies that the Agency's authority to receive federal monies is subject to general provisions of law requiring that such monies either must have been appropriated to the Agency or approved for receipt under the grant receipt or excess receipts laws in Title 32.

Also in the same vein, with respect to general federal highway-aid money, Sec. 15 clarifies that the Agency's authority to use federal funds for highway purposes is subject to general provisions of law requiring that such monies either must have been appropriated to the Agency or approved for receipt under the grant receipt or excess receipts laws in Title 32.

Sec. 16 Powers and Duties of Secretary of Transportation - cleans up language related to the establishment of transportation policies and the authority of the Secretary of Transportation. It also grants the Secretary authority to provide training for municipal employees and to pay for that training.

Subsec. (c) eliminates references to transportation policies being established by the Agency under one specific provision of law. These references are eliminated because several provisions of law govern the transportation policies of the State and such policies are established by the legislative and executive branches.

Subsec. (f) moves language regarding the obligation of the Secretary of Transportation to act within the authority of relevant State and federal law so that it applies to all grants of authority under the subsection.

Subdiv. (f)(6) grants the Agency authority to provide training and instruction to municipal employees and, where appropriate, to provide it at the Agency's expense.

Sec. 17 Middlebury Rail Tunnel Project - allows construction of the Middlebury Rail Tunnel Project with a minimum vertical clearance of 21 feet, if the Agency, the railroad, and any affected municipality agree to this clearance. Under applicable standards, the minimum vertical clearance that would otherwise apply is 23 feet. This level of clearance assumes the need for an extra two feet of clearance for trains that are electrified. Because Vermont's rail network is not electrified, this additional two feet of clearance is not necessary. Reducing the clearance from 23 feet to 21 feet is expected to save approximately \$1.6 million in construction costs. This section notwithstanding a provision of law that would otherwise require review and approval of the 21 foot clearance standard by the Transportation Board, even if the Agency, railroad, and affected municipalities agreed on this standard. The Committee believes that the additional layer of review by the Board is unnecessary if all concerned parties agree.

Sec. 18 Potable Water Supply and Wastewater Systems Permits; Exemption - adds an exemption to the law governing potable water supply and wastewater system permits, in order to exempt from permitting requirements the subdivision of property for an authorized highway or transportation project. Under an existing ANR rule, subdivisions arising from highway projects are already exempt from the potable water supply/wastewater system permitting law if the highway project is the subject of a condemnation process. In many cases, the Agency and municipalities avoid the need to initiate condemnation proceedings by offering property owners fair compensation for their property. This section expands upon the existing exemption in the ANR rule by:

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- (1) extending the exemption to transportation projects other than highway projects; and
- (2) allowing the exemption to apply regardless of whether a formal condemnation process has been initiated.

Sec. 19 Highway Division Director requires that the Director of the Agency's Highway Division be licensed as a professional engineer.

Sec. 20 Transportation Alternatives Grant Program - amends the Transportation Alternatives Grant Program to create a \$1.1 million set-aside for municipal environmental mitigation projects related to stormwater and highways. This set-aside will help municipalities to start addressing water quality issues prior to the expected mandatory implementation of general permits governing stormwater runoff generated by town highways. The Transportation Alternatives Grant Program provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities; environmental mitigation projects; Recreational Trail Program projects; and Safe Routes to School projects. Grants under the Program are awarded by a Transportation Alternatives Grant Committee, which awards approximately \$2.2 million in new grants every year.

Sec. 21 Clean Water Fund Monies - requires that monies disbursed from the Clean Water Fund for municipalities for environmental mitigation projects related to stormwater and highways shall be administered by the Agency through the Agency's Municipal Mitigation Grant Program. Grants to municipalities under the Program require a 20% local match. Under the effective dates section of the bill, this section will take effect if and when the Clean Water Fund is established.

Sec. 21a Municipal Mitigation Grant Program – Spending Authority – Sets a minimum expenditure threshold of \$1 million in the Fiscal Years 2017, 2018 and 2019 Transportation Programs for the Municipal Mitigation Grant Program with the funding coming from a delayed transfer of \$2.5 million from the Department of Public Safety.

Sec. 22 State Highway Bridge Program - adds a new project to the State Highway Bridge Program called the Missisquoi Bay Causeway Scoping Study, and authorizes spending of \$125,000 for an evaluation of the feasibility of removing a portion of the Causeway. The State has approximately \$4 million of federal earmark funds that can be used for removal of portions of the Causeway. These funds require a 20 percent non-federal match. At this time, the Agency is seeking authority only to evaluate the feasibility of a removal project, and has not requested that a removal project be added to the State's Transportation Program.

Sec. 23 Motor Fuel Transportation Infrastructure Assessment - establishes a floor of 3.96 cents per gallon on the two percent transportation infrastructure assessment, also known as the TIB assessment. The 3.96 cent per gallon floor is set at the current TIB assessment level that applies in April–June. If gas prices during a calendar quarter average less than \$2.47 a gallon, the floor will protect TIB fund revenues.

Sec. 24 Naming of Bennington Welcome Center and Renaming of Newport Airport - names the Bennington Welcome Center to be the "Senator James M. Jeffords Welcome Center" in honor of the late Senator, who secured federal funding for the welcome center. Sec. 24 also renames the Newport State Airport in Coventry to be the "Northeast Kingdom International Airport." The Bennington selectboard supports the naming of the Welcome Center provided for in this section. The Coventry selectboard and the Newport City Council both support the renaming of the airport provided for in this section.

Secs. 25–27 Naming of Transportation Facilities - relate to the establishment of a new process for the naming of transportation facilities.

Sec. 25 eliminates the responsibility of the Board of Libraries to name roads, and Sec. 26 makes a related conforming change.

Sec. 27:

- (1) grants the Transportation Board authority to name transportation facilities upon petition of the legislative body of a municipality, the head of an Executive Branch agency or department, or 50 Vermont residents;
- (2) directs the Board to hold a hearing on naming petitions and to adopt rules related to its naming authority;
- (3) addresses the appeal of Board decisions; and
- (4) gives the Board authority to delegate the responsibility to hold a hearing to a hearing officer or a single Board member.

These sections take effect on March 1, 2016, so the Board has time to adopt rules.

Sec. 28–31 Byways Advisory Council

Secs. 28–31 relate to the elimination of the Byways Advisory Council, which has not met since March 2013. The Council's functions have been limited since federal funding for byways was eliminated in 2012.

Sec. 28 repeals the statute that creates the Byways Advisory Council.

Sec. 29:

- (1) eliminates references to the Council;
- (2) specifies that State Scenic Roads or Byways can only be designated or discontinued on recommendation of affected municipalities and regional planning commissions;
- (3) reenacts language from the repealed statute related to standards for signs on scenic roads and byways; and
- (4) makes other technical changes to improve consistency in the terminology used to refer to scenic roads and byways.

Secs. 30-31 are conforming changes to other laws to eliminate references to the Council.

The Byways Advisory Council, formerly known as the Scenery Preservation Council, was created in 1966, and has 8 members: the Secretary of Natural Resources or designee; the Secretary of Transportation or designee; the Commissioner of Tourism and Marketing; and 5 members appointed by the Governor.

Under current law, the Council is charged with:

- (1) advising certain entities on request concerning Byway Program grants and on the designation of municipal scenic roads or byways;
- (2) recommending designation of State Scenic Roads or Byways after holding a public meeting; and
- (3) to foster public awareness of scenic roads and byway.

Sec. 32 Property Transfer Tax Return; Exemption - creates an exemption for public agencies from the obligation to file a property transfer tax return in connection with transfers of property for highway purposes, if the consideration for the transfer is \$10,000 or less.

This exemption has no revenue impact; it is merely an exemption from a requirement to submit a form. Even if a transfer qualifies for the exemption, a public agency is still required to notify the listers of a municipality of the grantors, grantees, consideration, date of execution, and location of the property when it files the deed for recording.

Representatives of the Agency of Transportation requested this exemption because the Agency makes many small, low-value acquisitions every year—such as slivers of property to widen a road. They testified that the property transfer tax return form is burdensome to complete and consumes resources that the Agency's Right-of-Way section could otherwise use to advance projects.

Sec. 33 Tax on Gains from the Sale or Exchange of Land; Exemption - creates an exemption from the land gains tax for transfers of property for approved transportation projects. The rationale for the exemption is that the purpose of the land gains tax—to discourage speculation and the “flipping” of land—typically does not apply when a property owner sells property to the State or a municipality for a transportation project. In addition, because property owners must be fully compensated by the State or municipality for federal-aid projects, including for land gains taxes, the State or municipality ends up paying the land gains tax. Thus, although this section creates an exemption, it is expected to be revenue neutral overall for the State.

Sec. 34 Evaluation of Adopt a Park and Ride Program - directs the Agency to evaluate the merits of an Adopt a Park and Ride Program, whereby organizations would volunteer to clean up litter at State park and ride facilities with permission of the Agency. The Senate added a floor amendment which extends this review and evaluation to also encompass a State Adopt a Highway Program.

Sec. 35. Effective Dates

Sec. 35 provides for the bill to take effect on July 1, 2015, except that:

- (1) Sec. 21 (administration of certain Clean Water Fund monies through the Municipal Mitigation Grant Program) will take effect if and when the Clean Water Fund is established; and
- (2) Secs. 25–27 (naming of State transportation facilities) will take effect on March 1, 2016.

2. **Is there a need for this bill?** Yes. Transportation projects need Legislative approval in order for the Agency to expend appropriations on projects and programs.
3. **What are likely to be the fiscal and programmatic implications of this bill for this Department?** Authorizes the expenditure of \$616 million in federal, state and internal service funds for Agency projects and programs.
4. **What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?** Provides funding for a study regarding the potential impacts on the partial removal of the Missisquoi Bay causeway which will require coordination with Fish and Wildlife. Contains funding in support of H.35, the Water Quality bill for reducing stormwater runoff from state and municipal roadways.

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5. **What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** Provides funding support for local and regional contractors and their employees, supports municipal transportation budgets, provides funding support for Regional Planning Commissions, for public transportation agencies, for state airports and Burlington International Airport, for businesses that ship products by rail and for human service agencies serving the elderly and disabled. All support.
6. **Other Stakeholders:**
- 6.1 **Who else is likely to support the proposal and why?** General public that like smooth roads, rail, aviation and public transit services.
- 6.2 **Who else is likely to oppose the proposal and why?** No one.
7. **Rationale for recommendation:** Sign the bill. This bill had no opposition in the Legislature. It initially passed the House with only 4 no votes, those that voted no objected to the \$6.4 million in cuts to bring the bill into balance, the Senate passed it unanimously and the House concurred with the Senate's version with a minor proposal of amendment which passed the House and Senate.
8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*
9. **Gubernatorial appointments to board or commission?**

Secretary/Commissioner has reviewed this document: _____ **Date:** _____